

Notice of Allowability

Application No.

09/973,810

Examiner

Kuen S. Lu

Applicant(s)

GUPTA ET AL.

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Pre-Appeal Brief Request for Review filed on December 13, 2005.
2. ☒ The allowed claim(s) is/are 1-16, 18-32, 34-43 and 45-50, now renumbered as 1-47.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date ____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date ____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other ____. |

DETAILED ACTION

1. After a thorough search and examination of the present application, and in light of the prior art made of record, update searches conducted, Applicant's Pre-Appeal Conference Request and claim limitations most currently amended, Claims 1-16, 18-32, 34-43 and 45-50 are allowed.

Reason for Allowance

2. The following is an examiner's statement of reasons for allowance:

In the Examiner's Office Action for Final Rejection of September 13, 2005, 35 U.S.C. § 103, rejections was primarily based on the reference of Replication Server® Design Guide, Sybase Inc., May 29, 1998 (hereafter "Replica") and in view of Swaller et al. (U.S. Patent 6,061,725, "ENDPOINT NODE SYSTEMS COMPUTER PROGRAM PRODUCTS FOR APPLICATION TRAFFIC BASED COMMUNICATIONS NETWORK PERFORMANCE TESTING", issued May 9, 2000, hereafter "Swaller").

In Pre-Appeal Conference Request filed December 13, 2005, the Applicant specifically pointed out that the Replica and Swaller references individually or in combination does not teach the claimed subject matter of "repeating the steps of logging at least one transaction and executing the at least one logged transaction on the second server until a set point is met, wherein a time duration of each repeating step is necessarily shorter than preceding repeating step" of the database migration method, disclosed in each of the independent claims 1, 13, 27, 31 and 40-42.

After further review of the search results previously conducted and consideration of the above Remarks, Pre-Appeal Conference Request and currently amended claims,

the Examiner is persuaded that the prior art made of record does not teach the subject matter as described earlier.

An expanded and updated search for the prior art on EAST database and on domains (NPL-ACM, Google, NPL-IEEE) has been conducted whose search logs are attached. The prior art searched and investigated in the database and domains does not fairly teach or suggest the claimed subject matter of repeating the steps of logging at least one transaction and executing the at least one logged transaction on the second server until a set point is met, wherein a time duration of each repeating step is necessarily shorter than preceding repeating step as disclosed in the database migration method.

The dependent claims in the groups (2-12), (14-16 and 18-26), (28-30), (32 and 34-39) and (43 and 45-50), depending claims 1, 13, 27, 31 and 42, respectively, also distinct from the prior art for the same reason.

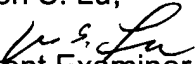
3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Contact Information

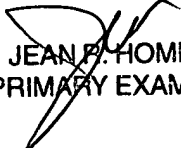
4. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kuen S. Lu whose telephone number is (571) 272-4114. The examiner can normally be reached on Monday-Friday (8:30 am - 5:30 pm).

If attempts to reach the examiner by telephone pre unsuccessful, the examiner's Supervisor, Jean R. Homere, Esq. can be reached on (571) 272-3780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for Page 13 published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

Kuen S. Lu,

Patent Examiner,

January 16, 2006


JEAN R. HOMERE
PRIMARY EXAMINER